



**IT IS ORDERED as set forth below:**

**Date: September 30, 2009**

*C. Ray Mullins*

**C. Ray Mullins  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**IN THE MATTER OF:**

ALLIED HOLDINGS, INC. and  
RELATED DEBTORS,

Debtors.

ALLIED HOLDINGS, INC.  
AXIS GROUP, INC.  
AX INTERNATIONAL, INC.,

Plaintiffs,

v.

RICHARD COX,

Defendant.

**CASE NUMBERS**

05-12515-CRM  
through 05-12537-CRM

ADVERSARY PROCEEDING  
NO. 07-6244

IN PROCEEDINGS UNDER  
CHAPTER 11 OF THE  
BANKRUPTCY CODE

**ORDER**

On June 24, 2009, the Court held a trial on the complaint filed by Allied Holdings,

Inc., Axis Group, Inc., and AX International, Inc. (hereinafter "Allied") against Richard Cox (hereinafter "Cox"). The Complaint asserts a claim for breach of contract and seeks injunctive relief in connection with the sale of property of the bankruptcy estate of Axis Group, Inc. This matter is a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 1334; § 157(b)(2)(A), (E), (O).

### **FINDINGS OF FACT**

AX International, Ltd. (hereinafter "AXI"), formerly Kar-Tainer International, is a wholly owned subsidiary of Axis Group, Inc. (hereinafter "Axis"), a debtor affiliate of Allied Holdings, Inc. AXI entered a securities purchase agreement (hereinafter the "Agreement") with Cox, through which Cox agreed to purchase certain ownership interests in Kar-Tainer International LLC and Kartainer International, Ltd. from Axis. The purchase price was \$2 million, subject to certain adjustments to be made based on the net working capital calculations to be done following the closing. The sale of the Kar-Tainer securities, pursuant to section 363 of the Bankruptcy Code, was approved by this Court and closed on October 27, 2005. This Court retained jurisdiction to hear all matters arising from this transaction.

The relevant terms of the Agreement include the following:

-Within 60 days after the Closing Date, [Cox] shall prepare, or cause to be prepared, and deliver to [Allied] a statement (the "Closing Working Capital Statement") which shall set forth an itemized calculation of the actual Net Working Capital (the "Actual Closing Working Capital") as of the Closing Date. Agreement, Section 1.2(a).

-[Allied] and its accountants shall have 30 days after its delivery to review the Closing Working Capital Statement. [Allied] shall have access to the work papers of [Cox] and its accountants used in preparing the Closing Working Capital Statement. If [Allied] determines that the Actual Closing Working Capital has not been properly calculated in accordance with Section 1.2(a), [Allied] shall inform [Cox] in writing (an "Objection"), setting forth a specific description of the basis of the Objection and a statement reflecting the adjustments to the amount of the Actual Closing Working Capital which [Allied] believes should be made, which Objection must be delivered to [Cox] on or before the last day of such 30-day period. [Cox] and [Seller] shall then have 15 days to attempt in good faith to reach an agreement with respect to any disputed matters with respect to the Actual Closing Working Capital. In reviewing any Objection, [Cox] and its accountants shall have reasonable access to the work papers of [Allied] and its accountants. If the parties are unable to resolve all of their disagreements with respect to the determination of the foregoing items within said 15-day period, they shall submit their respective prepared working capital statements to such accounting firm, as the parties shall agree (the "Audit Firm"). The Audit Firm shall, acting as an expert and not as an arbitrator, determine in accordance with this Agreement, and only with respect to the remaining differences so submitted, whether and to what extent, if any, the Closing Working Capital Statement requires adjustment. The parties shall direct the Audit Firm to use all reasonable efforts to render its determination within 30 days after such submission. The Audit Firm's determination regarding any such adjustment shall be conclusive and binding upon [Cox] and [Allied]. The Party with the greatest difference between its calculated adjustment amount and the adjustment finally determined by the Audit Firm shall solely bear the fees and disbursements of the Audit Firm in rendering its determination. [Cox] and [Allied] shall make readily available to the Audit Firm all relevant books and records and any work papers (including those of the parties' respective accountants) relating to the Closing Working Capital Statement and all other items reasonably requested by the Audit Firm. The "Final Working Capital Statement" shall be deemed to be (i) the Closing Working Capital Statement if no Objection is delivered by [Allied] during the 30-day period specified above or (ii) if an Objection is delivered by [Allied], the Closing Working Capital Statement, as adjusted by either (A) the agreement of the Parties or (B) the Audit Firm. Agreement, Section 1.2(b).

-If the Actual Closing Working Capital as reflected on the Final Working Capital Statement is less than US\$300,000, then the difference between such Actual Closing Working Capital and US\$300,000 shall be paid to [Cox] by [Allied] within 10 days after the final determination of the Final Working Capital Statement. If the Actual Closing Working Capital as reflected on the Final Working Capital Statement is greater than US\$300,000, then the difference between such Actual Closing Working Capital and US\$300,000 shall be paid by [Cox] to [Allied], on behalf of each Seller Party, within 10 days after the final

determination of the Final Working Capital Statement. Agreement, Section 1.2(c).

-This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. By an instrument in writing, [Cox], on the one hand, or [Allied], on the other, may waive compliance by the other party with any term or provision of this Agreement that such other party was or is obligated to comply with or perform. Agreement, Section 7.2.

-The parties hereto shall cooperate with each other and with their respective counsel and accountants in connection with any acts or sections required to be taken as part of or as a condition to their respective obligations under this Agreement. Agreement, Section 9.8.

On January 16, 2006, following the closing of the sale, Cade Daniels, Allied's in-house legal counsel, sent an e-mail message to Cox inquiring as to when Allied could expect to receive Cox's closing working capital statement. *See* Plaintiff's Exhibit 6. Cox responded on January 30, 2006 by delivering to Allied via e-mail a letter and a working capital statement (hereinafter the "First Working Capital Statement"). *See id.* The First Working Capital Statement indicated actual net working capital of \$235,088.33. In the letter that accompanied the First Working Capital Statement, Cox stated that he would "mail [Allied] all the supporting documentation." *See id.*

Allied had access to certain financial statements regarding Kar-Tainer (hereinafter the "Monthly Financial Packet") when it received the First Working Capital Statement. *See* Plaintiff's Exhibit 49. Other than the Monthly Financial Packet, however, Allied received no documents or information from Cox that were relevant to the reconciliation of the First Working Capital Statement between the closing date and the delivery of the First Working Capital Statement. Vickie Blumenthal, an Allied employee and certified public accountant,

was tasked with reviewing the First Working Capital Statement on behalf of Allied. On February 16, 2006, Blumenthal sent an e-mail message to Cox requesting clarification with regard to: 1) a bank account that was listed in the Monthly Financial Packet, but was not accounted for in the First Working Capital Statement (call account number 62071305174); 2) a large discrepancy between the account balance of a certain bank account on October 27, 2005 and October 31, 2005 (FNB account 53410047063); and 3) a liability categorized as "Tax to Inland Revenue." *See* Plaintiff's Exhibit 7. Blumenthal could not accurately determine whether the figures in the First Working Capital Statement were correctly calculated without obtaining clarification on these points.

On February 16, 2006, Cox responded to Blumenthal's e-mail message. At that time, he: 1) clarified that the call account was "frozen for a debt due at a later date" and promised that he would get additional details from his assistant; 2) stated that the large discrepancy in the FNB account resulted from post-closing receipts of accounts receivable and promised to provide Blumenthal with the bank account statement as of the 28th upon his return from a pending trip; and 3) agreed to get confirmation of the tax liability from his assistant. *See* Plaintiff's Exhibit 8. Cox failed to do so at that time.

On August 4, 2006, Blumenthal followed up again, asking for the same information she requested in February 2006. *See* Plaintiff's Exhibit 8. On August 5, 2006, Cox responded to Blumenthal's August 4th message. He noted that he was away until August 12, 2006 and again promised to provide additional information upon his return. *See*

Plaintiff's Exhibit 9. As of August 15, 2006, Blumenthal had not received the information requested and again contacted Cox. At that time, Cox informed Blumenthal that his assistant was away, but again agreed to provide bank statements, clarification of the "frozen account," and information about the tax payment. *See* Plaintiff's Exhibit 10. Cox failed to do so.

On August 31, 2006, Cox sent a letter to Allied requesting payment of the amount calculated by Cox in the First Working Capital Statement. *See* Plaintiff's Exhibit 16. In that letter, Cox informed Allied that he had become aware of additional liabilities owed by Kartainer as of the closing date that had not been included in the First Working Capital Statement. *See id.* Cox offered to accept the amount indicated as owing on the First Working Capital Statement if paid immediately. Otherwise, Cox suggested, the parties could "redo this by taking into account" the additional liabilities. *Id.*

On September 26, 2006, Cox submitted to Allied a revised working capital statement (hereinafter the "Second Working Capital Statement"). The Second Working Capital Statement indicated that Allied owed Cox \$122,718.08 rather than \$64,911.67 and Allied owed him \$123,000. *See* Plaintiff's Exhibit 21. The Second Working Capital Statement differed from the First Working Capital Statement in that: 1) certain accounts payable were added; 2) the exchange rate was changed in Cox's favor; and 3) the value of the current assets were incorrectly added together. Cox requested immediate payment of the amount owed to him under the Second Working Capital Statement. *See id.* Along with the Second

Working Capital Statement, Cox included information that Blumenthal had previously requested, including a statement for the FNB bank account and information regarding the Inland Revenue Tax liability. *See id.*

On October 19, 2006, Cox sent an e-mail message to Blumenthal, inquiring whether the final reconciliation had been completed and demanding that the matter be finalized. *See* Plaintiff's Exhibit 22. Blumenthal responded on October 25, 2006, stating that she still needed additional clarification regarding the same items that had been an issue prior to her receipt of the Second Working Capital Statement. For example, she requested additional clarification about the accrual of the Inland Revenue tax liability and the "frozen" bank account. *See* Plaintiff's Exhibit 22. She also requested a "cash application detail." *See id.* Cox responded the same day with an explanation as to why the "frozen" bank account was not included in his reconciliations and additional information about the Inland Revenue tax liability. *See* Plaintiff's Exhibit 23. Cox requested clarification as to what Blumenthal meant by "cash application detail" and noted that he had sent her the statement for the FNB account through the end of October 2005. *See id.*

Blumenthal responded to Cox the next day, explaining that she required the accounts receivable detail to ensure that checks that were received after the closing had not been improperly applied to reduce the accounts receivable balance prior to the closing. *See id.* She requested further clarification about the accrual of the tax liability. In response, Cox asserted that her request for an accounts receivable detail was unnecessary, as the

information that would be demonstrated by this document was irrelevant to the proper calculation of the accounts receivable balance as of the closing date. *See* Plaintiff's Exhibit 24. In this message, he also asserted that one of the payments received after the closing had nothing to do with accounts receivable, as it represented payment for the sale of "cassette steel." *See id.* He reiterated that he would like to have the matter finalized, but did not provide the requested accounts receivable detail or an answer to Blumenthal's question regarding the tax liability. Blumenthal was not satisfied with Cox's response, but determined that she would assume the proper application of cash received after the closing date. She did, however, ask for clarification of the sale of the steel, stating that she was now uncertain as to whether the steel had previously been included in the inventory for purposes of Cox's reconciliation. *See id.* By e-mail later that day, Blumenthal asked Cox to send her the October 27th balances for all of the current asset accounts. *See* Plaintiff's Exhibit 25.

Blumenthal never received the general ledger detail for the accounts receivable that would have satisfied her that the correct accounting treatment had been given to the checks received after the closing. *See* Plaintiff's Exhibit 53. At this point, Blumenthal did not believe that she had sufficient access to the financial information relied upon by Cox in preparing the Second Working Capital Statement to set "forth a specific description of the basis of the Objection and a statement reflecting the adjustments to the amount of the Actual Closing Working Capital which [Allied]" believed should be made, as required by the Agreement. Allied's forensic accounting expert, C. Patrick Braley, verified that post-closing



checks and deposits had been properly treated by referring to Plaintiff's Exhibit 53 (the accounts receivable detail statement) and to bank statements. He could not have determined the proper amount of the accounts receivable balance as of the closing date without access to Plaintiff's Exhibit 53. Blumenthal did not previously have access to Plaintiff's Exhibit 53.

Following Blumenthal's October 26, 2006 e-mail request to Cox for more details, Blumenthal stopped communicating directly with Cox. She asked John Harrington, President of Axis, to obtain the necessary information from Cox because Harrington and Cox had a prior relationship. On November 1, 2006, Harrington sent an e-mail message to Cox requesting the accounts receivable detail and cash receipts, as well as an inventory transaction detail. *See* Plaintiff's Exhibit 26. Cox did not respond with the requested information. Instead, on November 2, 2006, he sent a message to Harrington explaining his position that the information requested by Blumenthal was not relevant to the reconciliation and stating that he had been "trying desperately to bring this to a closure." *See* Plaintiff's Exhibit 27. Cox also e-mailed Blumenthal on November 10, 2006 asking where the reconciliation stood. *See* Plaintiff's Exhibit 28.

Allied objected to Cox's calculation of the Actual Closing Working Capital on November 14, 2006. *See* Plaintiff's Exhibit 29. This objection took the form of a letter from Harrington to Cox, which included a competing working capital statement prepared by Blumenthal on behalf of Allied. Allied's working capital statement concluded that the working capital as of the closing was \$519,000, which resulted in Cox owing Allied

\$219,000. Blumenthal was required to make certain assumptions with regard to the outstanding issues in order to prepare Allied's alternative working capital statement.

Harrington's November 14th letter to Cox suggested that Allied and Cox submit the matter to an independent accounting firm as outlined by the Agreement. *See* Plaintiff's Exhibit 29. On November 14, 2006, Cox responded via e-mail to Harrington's letter and the alternative working capital statement prepared by Allied. *See* Plaintiff's Exhibit 30. He did not include any additional financial information and he did not comment on the merits or accuracy of Allied's alternative working capital statement. Although Cox objected to the fact that he waited ten months to received Allied's alternative working capital statement, Cox stated that, if Harrington wanted to resolve the matter "in any fashion," Harrington should call him and arrange a meeting. *See id.*

On November 15, 2006, Cox sent a letter to Harrington asserting that he had never received a response from Allied to his final working capital statement, which he sent to Blumenthal in September 2006. *See* Plaintiff's Exhibit 33. Consequently, he expressed his opinion that the time for Allied to object to the Second Working Capital Statement had expired. *See id.* By letter dated November 30, 2006, Allied again suggested that the parties submit the matter to an independent audit firm. *See* Plaintiff's Exhibit 35. Cox objected to Allied's choice of an audit firm, *see* Plaintiff's Exhibit 36, but later recommended the firm of Wilson Lewis. *See* Plaintiff's Exhibit 41. Allied rejected Wilson Lewis, asserting that the firm had previously performed work for entities related to Cox. Allied then suggested

two additional firms that Cox rejected. On May 5, 2008, Cox submitted to Allied a revised working capital statement (the "Third Working Capital Statement"). *See* Plaintiff's Exhibit 45.

### **CONCLUSIONS OF LAW**

Cox asserts that he is entitled to judgment in his favor because he submitted the First Working Capital Statement, to which he received no objection from Allied, and later submitted the Second Working Capital Statement, to which Allied also failed to object within the required thirty-day period. Accordingly, Cox argues, the Second Working Capital Statement was deemed to be the final working capital statement pursuant to the terms of the Agreement.

Allied argues that Cox's failures to respond to its request for additional information prevented Allied from complying with the terms of the Agreement. Consequently, Allied asserts that it was not required to object to the First or Second Working Capital Statements within thirty days. Allied opposes any award of damages to Cox and instead seeks an order directing the parties to comply with the remaining requirements of the Agreement. If granted, such relief would require the parties to select a neutral auditor who would be tasked with determining the actual amount of the net working capital.

Resolution of this matter depends first upon whether either the First or the Second Working Capital Statements submitted by Cox were deemed to be the final working capital

statement within the meaning of the Agreement. Under Georgia law,<sup>1</sup> “[i]f the nonperformance of a party to a contract is caused by the conduct of the opposite party, such conduct shall excuse the other party from performance.” O.C.G.A. § 13-4-23; *see also Ray M. Wright, Inc. v. Stinchcomb*, 259 Ga. App. 212 (2002) (“‘A party to a contract can not cause a breach or delay in compliance by the other, and then set up the breach or delay so caused as freeing him from the contract.’”). Contractual provisions can be found to have been waived due to the parties’ conduct, even if, as in this case, the contract contains a provision against waiver. *See Vakilzadeh Enter., Inc. v. The Housing Authority of County of DeKalb*, 281 Ga. App. 203 (2006) (“Moreover, ‘a provision in a contract against waiver of contractual rights may itself be found by the jury to have been waived.’”); *see also Kusuma v. Metamatrix, Inc.*, 191 Ga. App. 255 (1989) (“‘It is equally well-recognized that a party to a contract ‘may waive contractual provisions for his benefit; [w]aiver of a contract right may result from a party's conduct showing his election between two inconsistent rights . . . . Acting on the theory that the contract is still in force, as by continuing performance, demanding or urging further performance, or permitting the other party to perform and accepting or retaining benefits under the contract, may constitute waiver of a breach.’”); *Greater Georgia Life Ins. Co. v. Eason*, 2008 WL 2684349 (Ga. App. Jul 10, 2008).

Here, Allied asserts that Cox’s failure to provide Allied with requested documents and his failure to answer Allied’s questions prevented Allied from objecting within thirty

---

<sup>1</sup> Georgia law governs the construction of the Agreement. *See* Section 9.5.

days of the delivery of the First and Second Working Capital Statements. Cox argues that Section 1.2(b) of the Agreement did not require him to provide his work papers to Allied until Allied objected to the working capital statement. He further asserted that the documents and information requested did not constitute "work papers" because Cox did not rely on these documents in preparing the First or Second Working Capital Statements and because the documents were created after or covered time periods that occurred after the closing.

The Court finds sufficient evidence to hold that Allied's obligation to act within a certain time under the terms of the Agreement was excused due to Cox's failure to respond fully to Allied's requests. Blumenthal's extensive testimony persuades the Court that she could not have determined whether Allied agreed or disagreed with Cox's figures without the information she requested from Cox. The testimony of C. Patrick Braley, Allied's accounting expert, supports this conclusion, as he testified that he relied on the same information that Blumenthal requested (Plaintiff's Exhibit 53) to prepare his report of the actual working capital as of the closing date.

Section 1.2(b) of the Agreement simply states that "[Allied] shall have access to the work papers of [Cox] and its accountants used in preparing the Closing Working Capital Statement. If [Allied] determines that the Actual Closing Working Capital has not been properly calculated in accordance with Section 1.2(a), [Allied] shall inform [Cox] in writing (an "Objection"), setting forth a specific description of the basis of the Objection and a

statement reflecting the adjustments to the amount of the Actual Closing Working Capital which [Allied] believes should be made, which Objection must be delivered to [Cox] on or before the last day of such 30-day period." Agreement, Section 1.2(b). The order of the preceding sentences leaves no doubt that Allied was to have access to the "work papers" used by Cox to create the working capital statement. In fact, common sense dictates that Allied should have access to the work papers to assist it in making the determination of whether or not it agreed with the figures used in the working capital statement. Any other interpretation would require Allied to object first and ask questions second, which is inefficient at best. There is no evidence that the parties could have intended such a result. Further, Section 9.8 of the Agreement required Cox to cooperate with Allied and its accountants "in connection with any acts or sections required to be taken as part of or as a condition to their respective obligations under" the Agreement. Agreement, Section 9.8. The evidence does not establish that Cox cooperated with Allied when it requested additional documentation and clarification. Rather, the evidence demonstrates that Cox made several promises to provide documents and additional information that would have satisfied Blumenthal's concerns, but failed to follow through on those promises.

The Court further rejects Cox's argument that, because Allied never specifically requested Cox's "work papers" by name, Cox had no obligation to provide the documents and clarification Blumenthal requested. In this case, work papers can reasonably be construed to mean those documents, account statements, etc., relied upon in order to create

an accounting. The fact that Blumenthal requested those specific pieces of information that she needed to reconcile Cox's working capital statements without specifically referring to the documents as "working papers" does not alter the nature of the documents requested. Further, even if, as Cox testified, he did not specifically rely on all of the documents that Blumenthal requested in order to create the First and Second Working Capital Statements, Cox continued to have a duty to cooperate with Allied in a way that would have enabled Allied to verify the accuracy of his figures in accordance with generally accepted accounting principles.

Similarly, the fact that certain documents requested by Blumenthal were created after the closing date or covered time periods that included dates after the closing date does not abrogate Cox's obligation to provide the documents. Blumenthal and Braley cogently explained that these documents were necessary to ensure that all transactions that had occurred prior to and immediately after the closing date were given proper accounting treatment. In other words, the accountants needed to verify that all transactions were consistently treated as either pre-closing or post-closing in all aspects.

Finally, the Court finds Cox's testimony that he relied solely on the documents that were contained in the monthly financial packet received by Blumenthal to be unsupported by the evidence. For example, Blumenthal requested further information about a figure used by Cox in his First Working Capital Statement for an Inland Revenue tax liability because she had never before heard of this liability and had no documents with which to confirm the

number used by Cox. Cox agreed during his testimony that he could not have obtained that figure from the monthly financial packet. Further, Cox could point to no document available to Allied at the time Blumenthal was reconciling the First or Second Working Capital Statement that would have enabled her to verify how Cox calculated this tax liability. It would appear from the evidence, including the testimony of Cox and Blumenthal, that Blumenthal had no ability to verify the accuracy of the amount used by Cox in the First Working Capital Statement for the Inland Revenue tax liability.

The Court also concludes that Cox waived his right to insist that Allied meet the exact terms of the contract. Cox first ignored the provision of the Agreement that required him to submit a working capital statement within sixty days of the closing. His conduct throughout the time period following the submission of the First and Second Working Capital Statements did not put Allied on notice that he would insist upon strict compliance with the terms of the Agreement.

Cox asserts that he was always clear in his demand to be paid the money that he claimed was owed him under the First Working Capital Statement. The evidence, however, supports the conclusion that he did not consistently act as if either the First Working Capital Statement or the Second Working Capital Statement had been deemed to be the Final Working Capital Statement. For example, Cox continued to respond, on multiple occasions, to Blumenthal's requests for clarification and documentation, as if the working capital statements that he had submitted were still subject to revision. He subsequently submitted



two revised working capital statements following his submission of the First Working Capital Statement. If, as he contends, the First or Second Working Capital Statements had been “accepted” by Allied due to its failure to file a “formal” objection, one would have expected Cox to have responded to Blumenthal’s requests with the concise statement that there was no reason for him provide the requested information, given the fact that either the First or the Second Working Capital Statement had already been deemed to be the Final Working Capital Statement.

Additionally, Cox made statements to Cade Daniels and John Harrington after his submission of the First and Second Working Capital Statements that would have suggested to Allied that Cox did not consider the working capital statement to have been finalized and that Cox was continuing to work with Allied to resolve the parties' differences as to the amount of the actual net working capital. For instance, after submitting the First Working Capital Statement, Cox informed Daniels that she could arrange for Allied to pay the amount stated in the First Working Capital Statement or, if not, the parties could "redo" the statement, taking into consideration other liabilities of which Cox had previously been unaware. When Harrington later suggested that the parties submit the matter to an independent accounting firm, Cox did not object to the submission of the matter to an auditor, but merely rejected Allied's choice of firms. This conduct suggested that he was not opposed to continuing the process of reconciling the parties' positions as provided for in the Agreement.

In its earlier order denying summary judgment to Cox, the Court noted that both parties had complained of the other's failure to meet deadlines required by the Agreement and that, throughout the course of their dealings, neither party acted as if time was of the essence. Just as it appeared at that time, the Court concludes that Allied's ability to perform its obligations under the Agreement was hampered by Cox's failure to provide necessary documents and answers to Allied's questions about Cox's calculations. Given that the Agreement expresses the clear intent of the parties that this matter would eventually be resolved by an independent auditor, the Court remains convinced that submitting this matter to an auditor is in the best interest of the parties and is consistent with the parties' intent at the time they executed the Agreement. For this reason, the Court denies judgment to Cox and grants judgment to Allied. Allied's requested injunctive relief shall be granted.

#### **CONCLUSION**

For the reasons stated above, the Court grants judgment in favor of the plaintiffs, Allied Holdings, Inc., Axis Group, Inc., and AX International, Inc. The request for injunctive relief is granted.

The Court shall hold a status conference for the purpose of selecting an independent auditor. The conference shall be held on November 9, 2009 at 2:00 p.m. in Courtroom Room 1203, Russell Federal Building, 75 Spring Street, Atlanta, Georgia.

**END OF DOCUMENT**

## **Distribution List**

### **Ralph J. Hiers**

Bushnell, Hiers, Hoppe & Drye, LLC  
990 Hammond Drive  
Suite 200-B  
Atlanta, GA 30328

### **Anthony Collins, Jr.**

Bushnell, Hiers, Hoppe & Drye, LLC  
990 Hammond Drive  
Suite 200-B  
Atlanta, GA 30328

### **Richard Cox**

Kar-Tainer International LLC  
2740 Sugarloaf Club Drive  
Duluth, GA 30097

### **Jonathan B. Davis**

Troutman Sanders  
600 Peachtree Street, N.E.  
Atlanta, GA 30308

### **Harris Winsberg**

Troutman Sanders, LLP  
600 Peachtree Street  
Suite 5200  
Atlanta, GA 30308

### **Alisa H. Aczel**

Troutman Sanders LLP  
Suite 5200  
600 Peachtree Street, NE  
Atlanta, GA 30308-2216